TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 184 Y.S. 15

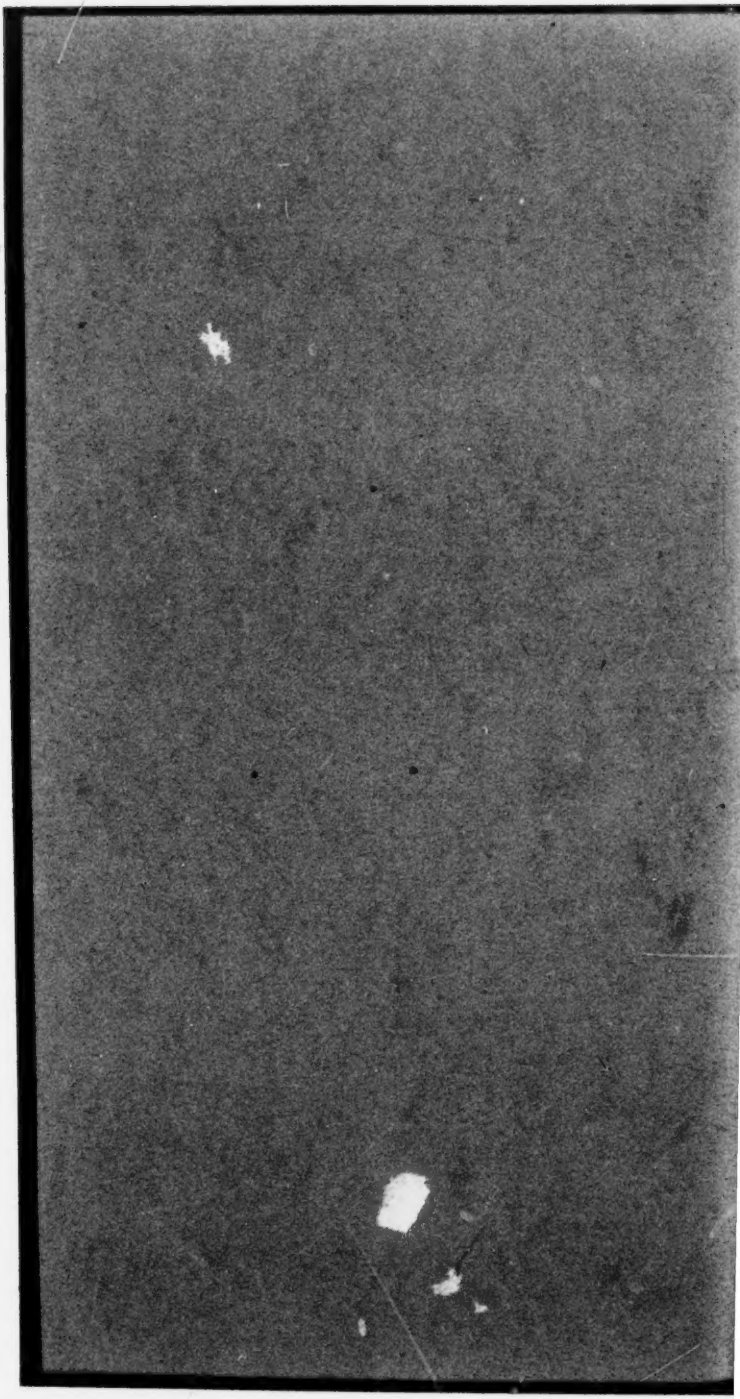
THE UNITED STATES, PETITIONER,

vs.

E. A. MORRISON & SON.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FILED MAY 4, 1898.
CERTIORARI AND RETURN FILED JUNE 9, 1898.
(16,230)



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a United States circuit court of appeals for the second circuit.

E. A. MORRISON & SON, APPELLANTS,
vs.
THE UNITED STATES, APPELLEE.

Transcript of record.—Appeal from the circuit court of the United States for the southern district of New York.

1 At a stated term of the United States circuit court for the southern district of New York, held in the United States court and post-office building in the city of New York, on the 4th day of April, 1895.

Present, Hon. E. Henry Lacombe, circuit judge.

In the matter of certain importations of merchandise made by E. A. Morrison & Son, on the vessels and at the dates as set forth in the annexed Schedule A, which is hereby referred to and made a part hereof.

SCHEDULE A.

The following are the importations and entries covered by this proceeding, with the dates thereof, and with such other data as are convenient for purposes of identification:

Entry No.	Vessel.	Entered.	Protest No.	Decision.
17677	La Champagne	Feb 4 91	12958 A 16940	March 5 95
29188	La Bretagne	" 25 92	do. do.	do. do.

2 SCHEDULE B.

The Board of United States General Appraisers has confirmed the action of the collector of the port in assessing and exacting duty at 60 per cent ad valorem on certain beads, stones, &c., thereby making errors of law and fact by failing to find, or finding the contrary of, the following propositions:

1. Said merchandise is glass beads, loose, unthreaded, or unstrung.
2. Said merchandise is imitations of precious stones, composed of glass or paste, and does not exceed one inch in dimensions and is not set.
3. Said merchandise is manufactures, of which metal, and not glass, is the component material of chief value.
4. Said merchandise assimilates to precious stones within the sense and meaning of section 5, act of October 1, 1890.
5. The merchandise of which proposition 1 is true is dutiable at 10 per cent ad valorem under par. 445 of said last mentioned act.
6. The merchandise of which proposition 2 is true is dutiable at 10 per cent ad valorem under par. 454 of said act.
7. The merchandise of which proposition 4 is true is dutiable at 10 per cent ad valorem under par. 454 and section 5 of said act.
8. The remaining merchandise is dutiable under par. 215 of said act at 45 per cent ad valorem.

3 EXHIBIT A.

CUSTOM HOUSE, PORT OF NEW YORK,
Collector's Office, Aug. 10, 1891.

Hon. Board of U. S. Genl. Appraisers, at the port of New York.

GENTLEMEN: I submit the protests of E. A. Morrison & Son, Nos. * * * * & 16,940 from the assessment of duty by this office at the rate of 60% ad val. on certain so-called beads.

An inspection of the invoice shows that the merchandise was returned by the appraiser as manf's glass 60%. Duty was assessed thereon at the rate stated under the provisions of par. 108, N. T. Reference is made to the two special reports of the U. S. appraiser herewith.

I have to report that the claimants have complied with the requirements of sec. 14 of the act of June 10, 1890.

The naval officer concurs in the decision of this office.

The entries and invoices covered by the above protests are inclosed herewith.

Repectfully, yours,
(Signed) J. J. COUCH,
Special Deputy Collector.

EXHIBIT B.

NEW YORK, *Apr. 17, 1891.*

COLLECTOR OF CUSTOMS,
Port of New York.

SIR: Protest is hereby made against your decision assessing duty at 60% ad val. on beads and imitation stones covered by entries below named. The ground of objection is that said merchandise is imi-
4 tations of precious stones composed of paste or glass, not exceeding one inch in dimensions, not set, and is dutiable at 10% ad val. only under par. 454, act of Oct. 1, 1890. If not as aforesaid, said merchandise is glass beads loose, unthreaded, or unstrung, and is dutiable at 10% ad val. only under par. 445, same act.

The excess is paid under compulsion, solely to obtain possession of said merchandise.

Entry No.	Vessel.	Entered.	Bond No.	Liquidated.	Marks and Nos.
17677	La Champagne.	Feb. 4 91	C	Apr. 9 91.	634 37
29188	La Bretagne.	" 25 "	C	" 10 "	642 45 and various as per entries and invoices.

Respectfully,

E. A. MORRISON & SON,
By COMSTOCK & BROWN,
Attorneys, 80 Broadway, New York City.

The offer is hereby made to furnish evidence to the Board of the United States General Appraisers, on reasonable notice from them, of the facts involved, and in support of the contentions herein.

EXHIBIT C.

PORT OF NEW YORK CITY,
Appraiser's Office, May 29, 1891.

Referring also to their protest 16,940 against the assessment of duty at the rate of 60% ad val. on certain so-called beads and imitation stones imported by them per "La Champagne" and "La Bretagne," Feb. 4 & 25, 1891, respectively claimed to be dutiable at 10% ad val., I have to report that the merchandise in question consisted of strung beads and loose beads, all of which were returned for duty at 60% ad val. under No. 108, N. T., but item designated as 6. 19/20 masses, on invoice No. 2534, case No. 637, were loose beads, and should have been returned for duty under 445 N. T., in harmony with decision G. A. 386 of March 2, 1891,

Very respectfully,

(Signed) M. CORBETT,
Assistant Appraiser.

[Not for publication.]

EXHIBIT D.

Before the U. S. General Appraisers at New York, Mar. 5th, 1895.

In the matter of the protest 12958 A/16940 of E. A. Morrison & Son against the decision of the collector of customs at New York, as to the rate and amount of duties chargeable on certain glass beads imported per "La Champagne" and "La Bretagne" and entered Feb. 4 & 25, 1891.

Opinion by Sharretts, G. A.:

We find as facts in this case:

(1) That the goods described in invoice No. 2354, per "La Champagne," case No. 637, as "619/20 masses mat jewel stones," &c., are loose beads, unthreaded or unstrung, of the same character as those subject of G. A. 386.

(2) That the remainder of the goods covered by the protest are glass beads, threaded or strung upon threads or cords.

We accordingly hold that the goods covered by our first finding of fact are dutiable as claimed, at 10% ad valorem, under paragraph 445, act of October 1, 1890, and to that extent sustain the protest; and that the remainder of the goods, covered by our second finding of fact, are dutiable as assessed, at 60% ad valorem, under paragraph 108 of said act, and the protest, in that regard, is overruled.

W. F. LUNT,
J. B. WILKINSON, Jr.,
THAD. S. SHARRETTS,
Board of U. S. General Appraisers.

6 United States circuit court, southern district of New York.

In the matter of the application of E. A. Morrison for a review of the decision of the Board of U. S. General Appraisers as to certain importations per "La Champagne," February 4, 1891; "La Bretagne," February 25, 1891. No. 2174.

Testimony taken before Hon. George H. Sharpe, as an officer of the court, in the above-entitled matter, pursuant to an order of reference by said court, dated June 4, 1895.

NEW YORK, *November 14, 1895.*

Appearances: For the importers—Albert Comstock (of Comstock & Brown). For the collector and Government—James T. Van Rensselaer, asst. U. S. attorney.

CHARLES H. BALDWIN, called as a witness on behalf of the importers, being duly sworn, testified as follows:

By Mr. COMSTOCK:

Q. Mr. Baldwin, with what concern are you connected?

A. With Edward A. Morrison & Son, 893 Broadway, this city.

Q. The importers in this case?

A. Yes, sir.

7 Q. And in what capacity are you employed there?

A. Salesman.

Q. Do you know the various kinds of merchandise imported and sold by that house?

A. Yes, sir.

Q. On the importation of that house per "La Bretagne," February 25, 1891, the invoice included a number of articles, described 2,000 tiger-eyes, red; 3 masses of mat jewel stones, green; 3 ditto, gray; 3 ditto, mixed; 2 ditto, straw; 3 ditto, dark topaz. Have you samples representing the character of these items?

A. Yes, sir.

By Mr. COMSTOCK:

Q. Does this string of articles which I now show you represent the tiger-eyes?

A. Yes, sir.

(Samples offered in evidence; received, and marked "Exhibit 2.")

Q. Do these small articles which I now show you represent the masses of mat jewel stones of various colors?

A. Yes, sir.

(Samples offered in evidence; received, and marked "Exhibit 3.")

Q. Now, referring to your importation per "La Champagne," February 4, 1891, state whether these same articles accurately represent, irrespective of whether they were drawn from that importation or not, the articles described on the invoice as cat's-eyes, tiger's-eyes; masses of mat jewel stones, garnet, medium blue, and straw.

A. Yes; the samples that have been submitted represent the same thing.

(Witness withdrawn temporarily.)

ADOLPH KAHN, called as a witness on behalf of the importers, being duly sworn, testified as follows:

By Mr. COMSTOCK:

Q. With what house are you associated, Mr. Kahn?

A. H. Wolff & Co., 545 Broadway, this city.

8 Q. In what capacity are you with them?

A. Confidential clerk.

Q. Your services include a sort of general management of the details of the business, do they not?

A. Yes, sir.

A. Are you familiar with the merchandise that that house imports and deals in?

A. Yes, sir.

Q. Have you with you samples representing the wax beads which were included in your entries per "La Bretagne," April 4, 1893; "Elbe," August 3, 1893; "La Champagne," February 13, 1894; "Trave," February 12, 1894?

A. Yes, sir.

Q. Please produce them.

(Witness produces two bunches of beads.)

(Samples offered in evidence; received, and marked "Exhibit 4.")

Q. Mr. Kahn, state whether all the beads represented by these samples (Exhibit 4), which were included in the several entries I have enumerated to you, were described on the invoices by the name of wax beads, or whether they were described otherwise.

A. They were described some as wax beads and others just as beads; in the case of the French entries they were described as "perles."

Q. But these wax beads were the only beads there were on these invoices?

A. Yes, sir.

Q. Irrespective of how described?

A. Yes, sir.

Q. Were they imported in the condition in which they are shown in these samples (Exhibit 4); that is to say, already strung?

A. Yes, sir.

Q. Mr. Kahn, please examine Exhibits 2 and 3 in this case (Suit No. 2174, Morrison), and state whether or not, in the understanding of your trade, all of these articles which you have examined are beads.

By Mr. VAN RENSSELAER:

Q. Mr. Kahn, I understood you to say that you are confidential clerk of H. Wolff & Co.?

A. Yes, sir.

9 Q. Have you ever had any experience as a buyer of these goods?

A. I have bought some in the market; yes, sir.

Q. When did you buy such goods in the market?

A. When we were out of any of these goods I went into the market and bought them.

Q. When did you do that? How long ago?

A. I have been doing so for the last fifteen or sixteen years, off and on.

Q. Have you bought different quantities of beads in wholesale lots?

A. Yes, sir.

Q. From wholesale houses here in New York?
A. From importers here in New York.
Q. Have you ever sold these articles at wholesale?
A. Yes, sir.
Q. In wholesale quantities?
A. Yes, sir.

By Mr. COMSTOCK:

Q. (Question repeated.) Mr. Kahn, please examine Exhibits 2 and 3 in this case (Suit No. 2174—Morrison), and state whether or not in the understanding of your trade all of these articles which you have examined are beads.
A. They are.
Q. And what is the case as to Exhibit 4; are they also beads commercially?
A. Beads.
Q. And were all of them beads commercially prior to August 6, 1890, as well as since?
A. Yes, sir.
Q. Is it a fact that beads as known in commerce are not necessarily globular in shape?
A. Yes, sir.
Q. And with holes alongside of one another as in Exhibit 3?
A. Yes, sir.
Q. Referring particularly to the goods composing Exhibit 3, state what beads of that particular variety are known as besides beads, if they have any other name?
A. Jewels.
Q. Why do you understand that they were or are sometimes known as jewels?
A. They have got that name; they are used for trimming purposes to imitate precious stones.
Q. Are these articles, Exhibit 3, recognized in your trade as constituting imitations of precious stones?
A. Yes, sir.
Q. Were they so recognized as long ago as 1890 and theretofore?
A. Yes, sir.
Q. Have you ever seen the trimmings that are made embodying these things?
A. I have seen some; yes.
Q. Do you know how they are known?
A. I don't know.
Q. Don't know by what name they are known?
A. No.
Q. Referring to Exhibit 2, state what that represents, if you know; I don't mean as to its being a bead, but as to what it represents in any other way.
A. I have not dealt in that.
Q. Referring to Exhibit 4, state what those beads represent.
A. They represent pearls—imitation pearls.
Q. You don't mean that they represent imitation pearls, but real pearls?

A. They represent real pearls, not imitation.

Q. In using them they are employed singly as well as together, are they not?

A. Yes, sir.

Cross-examination by Mr. VAN RENSSELAER:

Q. Mr. Kahn, do you testify from memory that these articles that you have described as beads were some of them described as wax beads on the invoices?

A. Yes, sir; I looked at the invoices before I came down to-day.

Q. Now, as to those that you say were invoiced as "perles." Was that invoice in English or in French?

A. It was in French.

Q. Can you state, if you remember, what the designation in French was?

A. Perles.

Q. These articles, Exhibit 4, were they imported in the condition in which these samples appear here?

A. Yes, sir.

Q. In the same way?

A. Yes, sir.

11 Q. Have you ever personally bought at wholesale these articles represented by Exhibit 3?

A. Yes, sir.

Q. I understood you to say that they as well as all the other exhibits were commercially known as beads. That is true, is it not?

A. Yes, sir.

Q. Is that not their general name in trade?

A. Yes; that is their general name in trade.

Q. Have you ever heard them called jewels otherwise than occasionally, as it were?

A. I have heard them called jewels.

Q. But that isn't their regular trade name?

A. Well, no; they call them jewels and they call them beads.

Q. Aren't they generally called beads in the trade?

A. Yes, sir; they are called beads or jewels in the trade.

Q. Does your house, or did it in 1890, deal in articles that were commercially known as imitation jewels?

A. Only jewels like the samples you have in your hand (referring to Exhibit 3).

Q. Those are the only things you kept of that nature?

A. Those were the only things.

Redirect examination by Mr. COMSTOCK:

Q. When you testify that the little articles Exhibit 3 are the only articles that your house have dealt in which were known as imitation jewels, do you mean by that to qualify your testimony that the articles Exhibit 4 are in fact imitations of pearls and are dealt in by your house, or do you adhere to that testimony?

A. They are imitation of pearls.

Q. And you deal in them?

A. Yes, sir.

Q. And did at that time?
A. Yes, sir.

CHARLES H. BALDWIN recalled on behalf of the importer.

By Mr. COMSTOCK:

Q. Referring to Exhibit 2, state what that particular character and variety of beads represents.

A. Represents cat's-eye.

12 Q. That is the stone known as cat's-eye?

A. Yes.

Q. Not the eye of a cat, but the stone known as cat's-eye?
A. The stone known as cat's-eye.
Q. Are you familiar with the purpose for which this article is employed?
A. It is used in trimming.
Q. State whether in its use for that purpose it is intended to subserve the purpose of a cat's-eye or an imitation of one.
A. Just used in fancy trimming.
Q. For the purpose of imitating a cat's-eye stone?
A. Yes, sir.
Q. Referring to the articles Exhibit 3, state whether they have any other name in trade besides beads.
A. Jewels.
Q. They are known as jewels, are they?
A. Yes.
Q. Can you state to what that name has reference—why they are known as jewels?
A. They imitate jewels.
Q. They imitate real jewels?
A. Real stones.
Q. Real precious stones?
A. Real precious stones.
Q. What are they used for—I mean Exhibit 3?
A. They are used for dress trimmings.
Q. And what are such trimmings known as?
A. Jewel trimmings.
Q. Do you understand that they are so named, and that these articles are so used with the object of imitating or representing the various precious stones whose color they follow?
A. Yes, sir.
Q. Look at Exhibit 4 and state whether you are commercially familiar with that article.
A. No, sir; I am not.
Q. Have you never handled wax or pearl beads?
A. We handle pearl beads—wax pearl beads.
Q. Differing from these (Exhibit 4) perhaps in size?
A. Differing in shape.
Q. Mr. Baldwin, state now generally as to Exhibits 2 and 3 what single name, as used in trade and commerce at and prior to, we

13 will say, October, 1890, would have covered and described them.

A. Beads.
Q. They were all beads?
A. They were all beads.

Q. Are you personally a dealer or connected in business with a dealer in beads at wholesale?

A. We sell beads at wholesale.

Q. They are included among the things that you sell?

A. Yes, sir.

Q. Had you a commercial experience in the class of beads as understood in trade and commerce in this country among wholesale dealers at and prior to October, 1890?

A. Yes.

Q. Do you know how that term was used, and what it meant in trade?

A. Yes, sir.

Q. State whether or not that term as used in trade at that time would have covered and included Exhibit 4.

Mr. VAN RENSSELAER. Objected to, as the gentleman has said that he didn't deal in articles like Exhibit 4.

(Objection sustained.

Upon counsel for the importers insisting upon its admission under Rule XI of this court, it is so admitted.)

A. Yes, sir.

Cross-examination by Mr. VAN RENSSELAER:

Q. Mr. Baldwin, in what condition were these articles represented by Exhibit 2 imported by your house?

Mr. COMSTOCK. The importer concedes that they were imported upon strings, and that the claim that they were entitled to entry as beads, loose, threaded, or unstrung, is not insisted on.

Q. Mr. Baldwin, you are not a jeweler and never have been?

A. I have been in the jewelry business; yes, sir.

Q. What is the character, if you know, of the stone which is designated as cat's-eye?

A. It is a stone that resembles a cat's eye in the shading.

14 Q. Is it an opal or an agate, or what kind of stone, as far as you know?

A. It is a variegated color.

Q. Have you ever seen a cat's-eye stone of this peculiar reddish-brown color represented by Exhibit 2?

A. You mean in the genuine?

Q. Yes.

A. No, sir.

Q. Those articles look like brown beads with a light streak through the middle of them, do they not?

A. Yes, sir.

Q. That is about all they look like?

A. A very poor imitation of a cat's-eye.

Q. Isn't the imitation so poor that nobody excepting, perhaps, a man as intelligent as yourself would recognize them as imitation cat's-eyes?

Mr. COMSTOCK. Objected to as calling for a conclusion from a witness entirely within the proper functions of the court.

(Objection overruled. Mr. Comstock excepts.)

A. I think anybody that has seen a cat's-eye and saw that would know it is a very poor imitation.

Q. Have you ever heard them bought and sold as imitation cat's-eyes?

A. They are bought and sold as cat's-eye stones—cat's eye beads, at least.

Q. You therefore say you have heard them bought and sold as cat's-eye beads?

A. Yes, sir.

Q. You never have heard them designated in trade or bought and sold as imitation cat's-eye stones, have you?

(Objected to as irrelevant and immaterial; objection overruled; exception.)

A. I have never heard anything about that.

Q. As to Exhibit 3, Mr. Baldwin, these articles are bought and sold as beads, are they not?

A. Yes, sir.

Q. Have you ever known them to be bought and sold as jewels?

A. Well, in our business we class them as jeweled stones.

Q. You class them as jeweled stones?

A. What I mean, that is the term——

Q. You don't class them as beads at all; is that the understanding?

A. People call them beads and call them stones; I suppose both terms are appropriate.

Q. You don't deal at all in the jewel trimmings, to which you have referred, do you?

A. Yes, sir.

Q. Does your house deal in them?

A. Yes, sir.

By Mr. COMSTOCK:

Q. Mr. Baldwin, as a jeweler you have had experience with various precious stones, have you not?

A. Yes, sir.

Q. I want you to tell me whether it is a known practice in regard to precious stones to drill them so that they become a bead?

A. No, sir.

FRANK H. FOEPPEL, called as a witness on behalf of the importers, being duly sworn, testified as follows:

By Mr. COMSTOCK:

Q. What business are you in, Mr. Foeppel?

A. Importing business—millinery.

Q. Here in the city of New York?

A. Yes, sir.

Q. With what house?

A. D. W. Bedell, successor to John Thompson.

Q. Are beads included in the line of goods your house deals in or imports?

A. Yes, sir.

Q. How long a commercial experience at wholesale in the markets of this country have you personally had with beads?

A. Twelve years.

Q. And you have personally bought them and sold them in wholesale quantities on these markets during that time?

A. Yes, sir.

Q. Please examine the exhibits in this case, Nos. 2, 3, and 4, and point out anything that you find there which has not been included in the commercial meaning of the word "beads" at all the times within your knowledge.

16 By Mr. VAN RENSSELAER:

Q. Have you dealt in all those classes of articles?

A. We have dealt in all excepting Exhibit 2.

By Mr. COMSTOCK:

Q. (Question repeated.) Please examine the exhibits in this case, Nos. 2, 3, and 4, and point out anything that you find there which has not been included in the commercial meaning of the word "beads" at all the times within your knowledge.

Mr. VAN RENSSELAER. Objected to as regards Exhibit 2, in which the witness says he has not dealt.

(Objection sustained.

Counsel for the importers insists upon its admission under Rule XI of this court, and it is so admitted.)

A. I would consider them all beads.

Q. You having said in answer to the cross-question that you had not dealt in Exhibit 2, state whether you have dealt in articles resembling it in the general character, although not in the particular colors.

Mr. VAN RENSSELAER. Objected to as calling for testimony as to some article which is not in suit here.

(Objection overruled. Mr. Van Rensselaer excepts.)

A. We had some similar to it in a pin—bonnet pin and a hat pin.

Q. Now, state whether any of these articles that you have dealt in, Exhibits 3 and 4, have any other commercial name in addition to its name of beads, and if so, what it is?

A. Exhibit 3 are called imitation jewels.

Q. And Exhibit 4, have they any other name than beads?

A. Imitation pearls or wax beads.

Q. As to Exhibits 3 and 4, state, if you know, what feature it is about them that gives them their use and their desirability and their

17 value in trade and the uses they are put to.

A. Different colors to imitate the precious stones.

Q. It is a fact that they imitate precious stones, is it?

A. Yes, sir.

Q. To what use, if you know, are these articles, Exhibit 3, chiefly devoted?

A. Trimmings for dresses or hats.

Q. Do you deal in such trimmings?

A. Yes, sir.

Q. State if those trimmings are characterized by any particular name which implies the presence of articles like Exhibit 3 in them, and if so, what the name is.

A. Jeweled trimmings.

Cross-examination by Mr. VAN RENSSELAER:

Q. Are the little articles in the envelope, Exhibit 3, ever bought and sold in trade as jewels or imitation jewels?

A. Yes; they are bought and sold as imitation jewels.

Q. And not as beads at all?

A. Beads would certainly include these, too; beads would be the general name for all these items, Exhibits 2, 3, and 4.

Q. They are all beads?

A. They are all beads.

Q. And then, as a class or subclass of beads, you say Exhibits 3 and 4 are called jewels or imitation jewels?

A. Yes, sir.

Q. Please look at the little articles in the envelope there, Exhibit 3, and tell us, if you can, what jewels you think they imitate.

By Mr. COMSTOCK:

Q. Mr. Foeppel, have you any business familarity with the different real precious stones?

A. I have not.

Mr. COMSTOCK. I object to the direct question as one calling for testimony which this witness is not competent to give.

Mr. VAN RENSSELAER. I insist upon the question on the ground that the gentleman has brought out on the direct examination that these are imitations of precious stones.

(Objection overruled. Mr. Comstock excepts.)

18 By Mr. VAN RENSSELAER:

Q. (Question repeated.) Please look at the little articles in the envelope there, Exhibit 3, and tell us, if you can, what jewels you think they imitate.

A. My knowledge of precious stones is too limited to tell which stones they would imitate.

Q. Then you can't say that they imitate precious stones at all, can you?

A. I can answer that question as far as they are known commercially under the name of imitation jewels.

Q. Do you deal in articles exactly like or very nearly like Exhibit 4—these pearl beads?

A. Yes, sir.

Q. Have you ever known of them being bought and sold as imitation pearls?

A. Yes, sir.

Q. Is there not an article in your trade, and do you not deal in an article, which is specifically known as imitation pearls, and which is not that article.

A. No, sir.

HUGO HEUMANN, called as a witness on behalf of the importers, being duly sworn, testified as follows:

By Mr. COMSTOCK:

Q. With what house are you associated, Mr. Heumann?

A. Samuel Schiff & Co.

Q. What place?

A. 670 Broadway.

Q. This city?
A. This city.
Q. Who are dealers in what?
A. Millinery ornaments, beads, and trimmings.
Q. Are you personally conversant, and have you had commercial dealings at wholesale in these classes of goods?
A. Yes.
Q. For how long a time?
A. Over seven years.
Q. Always in this country?
A. Yes, sir.
Q. Examine Exhibits 2, 3, and 4 and state whether you deal in articles identical with or substantially the same as each and every one of those.
A. We have dealt in Exhibits 3 and 4.
Q. Have you dealt in nothing at all resembling Exhibit 2?
A. Yes, sir; I have.
19 Q. In what respects resembling it?
A. In shape.
Q. Differing only in color?
A. In color.
Q. Now, state from your experience in articles of this class and in the other classes that you have testified about whether there is any article among these exhibits which would not have been covered by the term "beads" as used in the wholesale trade in this country at all the times during which you have been in the trade.
A. They all are known and dealt in as beads.
Q. If any one has any specific name to distinguish it from any sizes, shapes, and colors of beads, please state what such specific name is, keeping always within trade terminology.
A. Exhibit 3 are called jewels; Exhibit 4 are called wax beads, or Roman beads, or imitation pearls.
Q. In view of all these special names that you have given, does the use of them imply in a trade sense that the articles so specially named are any the less beads commercially?
A. It doesn't take anything away from their character as beads.
Q. They are all beads, no matter what else they may specially be?
A. Yes.
Q. Referring to Exhibit 3, which you have said are called jewels, state what their use is.
A. They used to be employed in the manufacture of trimmings or braids, and they are to represent jewels.
Q. What are such trimmings and braids specifically known as on account of the presence of these articles in them?
A. Jeweled braids or jeweled trimmings.
Q. State as to Exhibit 2, or the article differing only in color from it which you have traded in, and as to Exhibit 3 and as to Exhibit 4 what it is about them, if you know, that gives them their currency and desirability in trade.
A. So far as my knowledge goes, they are only employed in such a way as to give an imitation of some costly jewel.

Q. Calling your attention to the fact that the word "jewel" may mean not only a gem or precious stone, but perhaps a piece of jewelry, I ask you whether you mean that they are used to imitate a gem in the sense of a piece of jewelry or whether you mean a jewel in the sense of a stone.

A. Of a stone—single stone.

Q. Then I am correct in concluding from your testimony that all three of these exhibits (2, 3, and 4), according to your knowledge, find their use and value and desirability in the fact that they imitate precious stones?

A. My answer, as far as Exhibit 3 and Exhibit 4 goes, is unqualifiedly yes; but in regard to Exhibit 2 I may say that in this form and shape I have only seen these goods made of wood, ebony, horn, or of a character like that, and I have never seen them to resemble any smaragd and sapphire.

Q. You have no personal trade familiarity with real precious stones, have you, as a merchant?

A. No, sir.

Q. Do you mean to be understood as expressing any difference of opinion regarding Exhibit 2 from a witness who has testified here to-day that it was in fact an imitation cat's-eye, although a poor imitation?

A. I have never dealt in them; I have never seen them in my trade connections.

Q. Do you mean to be understood as expressing a difference in opinion from his statements that they were an imitation of cat's-eye.

Mr. VAN RENSSELAER. Objected to on the ground that the gentleman has not heard the testimony referred to. His answer is already explicit on the subject.

By the REFEREE:

Q. Did you hear the previous witness testify about their being cat's-eyes?

A. Yes.

Q. You heard what he said?

A. Yes, sir.

Q. Have you any opinion as to whether he was right or wrong about it?

A. I could not tell you; I don't know the bead called cat's-eye; I have never seen it or never heard of it in my experience.

21 Cross-examination by Mr. VAN RENSSELAER:

Q. You say that all of those exhibits with which you are familiar, Mr. Heumann, are commercially known as beads?

A. Yes, sir.

Q. Is the trade name or designation by which these little articles, Exhibit 3, are known, jewels?

A. Yes, sir.

Q. Is that the only name that you have heard applied to them in trade?

A. They call them imitation jewels; we classify them as beads.

Q. Then the designation "jewels" is a class of beads, as I understand it?

A. It is a certain class of beads.

Q. You say Exhibit 4 are known in trade as wax beads or Roman beads?

A. Yes, sir.

Q. Have you ever known them to be called in trade imitation pearls?
A. Yes.
Q. Is there not another class of articles dealt in in your trade as imitation pearls which are different from those altogether?
A. There is a similar article, but it is only pressed on one side, and is used to form the head of a pin.
Q. That is the only other kind of imitation pearls that you know of in your trade?
A. Yes; they are called pearl pins when they are mounted on the pin.
Q. What are they called, if anything, before they are mounted on the pins?
A. Pearls, half pearls, or three-quarter pearls.
Q. Are they not known as imitation pearls?
A. They are in fact an imitation, but you call for pearls, or half pearls, or three-quarter pearls.
Q. In trade they would be called pearls, half pearls, or three-quarter pearls?
A. Yes, sir.
Q. You said, I believe, that you were not familiar with real jewels or precious stones?
A. Yes, sir.
Q. You are not familiar with them?
A. I am not.
Q. Therefore you do not state any particular resemblance or imitation that there is in any of these articles to real stones, within your knowledge?
A. From general knowledge I know how a jewel of a certain description looks.
22 Q. Do you not mean to say merely that commonly and in trade they are known as jewels or imitation pearls?
A. That is what I mean to say.

Redirect examination by Mr. COMSTOCK:

Q. Do you mean to qualify your previous testimony that it is in fact the resemblance of these articles such as it is to different precious stones which gives them their use and value and desirability? Do you mean to qualify that testimony?
A. They are made to resemble—to imitate precious stones.
Q. Referring to Exhibit 4 and to your testimony about those articles known as pearls, or half pearls, or three-quarter pearls, which are used for pin heads, state whether or not those last articles are, so far as your senses enable you to discern, of the same materials and made up of the same imitation as Exhibit 4.
A. They are for the same purpose.
Q. You state that you have known these to be sold as imitation pearls, Exhibit 4. Is or is not that in fact an entirely usual name for them, or "pearls" without the word "imitation?"
A. In the millinery trade, in which I am most familiar, they are called wax beads or Roman beads; but they are called once in a while by people who make trimmings partly for hats or partly for dresses, and they ask for imitation pearls, because they use them for the purpose of making the impression on some piece of embroidery as if it was studded with a real pearl, and they call for the imitation pearl.

Q. And what they want is this Exhibit 4?
A. That is what they want.

Adjourned subject to fixing a date for further hearing.

23 Hearing resumed February 27, 1896.

Appearances: For the importers—Albert Comstock (of Comstock & Brown). For the collector and Government—James T. Van Rensselaer, Asst. U. S. attorney.

JOHN LAMONT, called as a witness on behalf of the importers, being duly sworn, testified as follows:

By Mr. COMSTOCK:

Q. What is your business, Mr. Lamont?
A. Lapidary and importer of precious stones.
Q. Are you also a wholesale dealer of precious stones in this country?
A. Yes.
Q. And commercially familiar with the general class of precious stones handled in trade in their various conditions?
A. Yes, sir.
Q. State whether or not precious stones are dealt in with holes drilled through them as well as without.

By Mr. VAN RENSSELAER:

Q. How long have you been dealing in precious stones?
A. I have been in business for myself for eighteen years.
Q. Have you bought precious stones during that time as well as sold them?
A. Yes.
Q. Both?
A. Yes.
Q. Are you as a lapidary familiar with the cutting of precious stones?
A. I am a practical lapidary.

By Mr. COMSTOCK:

Q. (Question repeated.) State whether or not precious stones are dealt in with holes drilled through them as well as without.
A. They are.
Q. In the form such as beads?
A. Yes.
Q. And also what is called half drilled—with the hole half way through?

A. Yes.

24 Q. Now, state whether or not precious stones in these forms that I have described in my last few questions are included within the trade understanding of the term "precious stones."
A. They are.
Q. Examine the articles which I now show you, and tell us what they are.
A. That is a topaz (referring to one of the articles shown witness).

By Mr. VAN RENSSELAER:

Q. Do you deal in such articles?
A. Yes.

Q. Like these samples?

A. Yes.

The WITNESS. This is an amethyst [referring to another sample shown witness], and this a crystal [referring to a third]. This is known by three different names [referring to a fourth]—crocidolite, that designates the material, and then it is known as tiger-eye also. Crocidolite is the proper name of it, and then it is called again a cat's-eye, on account of having that streak through it.

By Mr. COMSTOCK:

Q. It is a stone of crocidolite, and a stone known as cat's-eye or tiger-eye?

A. As well as on account of the way it is cut.

Q. Are any or all of these four articles which you have named drilled wholly or in part?

A. All drilled wholly—drilled through.

Q. In their present form, do you testify that they are still things which in the trade would be known as precious stones?

A. Yes, sir.

Q. If a person should have come into your place of business at or prior to October, 1890, and asked you to show him all the amethysts that you had, would you have included such articles as the one of these which you have said is an amethyst?

A. Yes, sir.

Q. Is the last true as to cat's-eye, topaz, and crystal?

A. Yes, sir.

Q. And as to all of these stones, state what term or class as understood in the trade would cover them all in their present condition as you see them.

A. Precious stones; but they are designated by their forms, &c. If a man comes and asks for an amethyst, I should ask him what kind of an amethyst he wanted; if he said an amethyst ball I should produce what is known as a faceted amethyst ball with a hole drilled through. The crocidolite is a plain ball.

Q. The crocidolite is a plain ball as distinguished from a faceted ball?

A. Yes.

Q. What term would apply, for instance, to other forms in which amethysts are dealt?

A. They are dealt in cabachon.

Q. That is a form faceted on one side and curved on the other?

A. The cabachon means puffed out, rounded top.

Q. Without facets?

A. Without facets.

Q. But a flat back?

A. A flat back.

Q. Other forms are——

A. Are the faceted stones, cut after the style of a diamond; if they wanted a faceted ball or a plain ball, we know just what they mean.

Q. So all these various forms were included within the class of precious stones?

A. Yes, sir.

Q. To what purposes are articles like the four which you have named put?

A. Various uses; they are used for earrings occasionally, and they are now being used for chatelaines or queen chains; they join several of them together with a charm attached to the end.

Q. Jewelry purposes only?

A. Jewelry purposes only.

Q. They serve no utilitarian purpose as distinguished from ornament?

A. Not that I am aware of.

Q. State whether or not pearls are members of the commercial class of precious stones.

A. They are known as such.

Q. Regarded by commerce as included within the class?

A. Yes.

26 Q. And has that always been true?

A. Yes; to my knowledge.

Q. Are pearls dealt in drilled as well as undrilled?

A. They are.

Q. And when drilled are they devoted to ornamental or to utilitarian purposes?

A. For ornamental purposes.

Q. Parallel to the purposes which they subserve when undrilled?

A. Yes.

Mr. COMSTOCK. I offer in evidence these four stones, about which the witness has been testifying.

(Samples received and marked "Exhibit 5.")

Q. Examine Exhibit 2 in this case and state of what, if any, precious stones those are imitations.

A. Imitation of cat's-eyes or crocidolites.

Q. Examine Exhibit 3, if you please, and state the several stones those articles are imitations of.

A. This is an imitation of a garnet (referring to a dark red stone); that is an aqua marine (referring to a pale-blue article); that could be called an imitation moonstone (referring to a bluish stone); here is a topaz (referring to an amber-colored stone).

Q. By that you mean imitation topaz?

A. Yes. That comprises all the stones that are imitated by them.

Q. Examine Exhibit 4, if you please, and state what, if any, precious stones they imitate.

A. The pearl.

Cross-examination by Mr. VAN RENSSELAER:

Q. Mr. Lamont, is garnet a precious stone which admits of being drilled?

A. Yes, sir.

Q. A hole may be drilled through it?

A. Yes, sir.

Q. Is aqua marine a stone which admits of a hole being drilled through it?

A. Yes, sir.

Q. And a moonstone also?

A. Yes, sir.

Q. How is it as to topaz? Does a topaz admit of drilling?

A. Yes, sir.

27 Q. A diamond would not admit of a hole being drilled through it?

A. It is almost impossible to do it; I believe it has been done.

Q. Is not a diamond a stone with a comparatively easy cleavage so that it would be liable to split?

A. Not in drilling; not so much as a moonstone.

Q. Has the moonstone an easy cleavage?

A. Yes, sir; cleaves like isinglass sometimes.

Q. When a stone has an easy cleavage is it not a matter of extreme difficulty to drill a hole through?

A. That depends upon what direction you are drilling it.

Q. If the direction was in the plane of the cleavage I suppose it would be more difficult?

A. It would be more difficult.

Q. Have you in your experience seen all these stones which you have referred to, namely, the cat's-eye, the amethyst, the garnet, the aqua marine, the moonstone, and the topaz; have you seen them with holes drilled through them?

A. Yes, sir; other stones as well.

Q. And so you are not speaking of the genuine precious stones?

A. Yes, sir.

Q. I understand that these stones included in Exhibit 5 are all genuine stones?

A. Yes, sir.

Q. Mr. Lamont, is not the dealing in imitation precious stones a special department of the business relating to precious stones?

A. Not necessarily.

Q. Do you deal yourself in imitations of precious stones?

A. Imitations and real.

Q. Is that a part of your business?

A. A part of my business to cut them and deal in them.

Q. The imitation precious stones that you know in trade are designed to imitate as closely as possible and to serve in the place of the genuine precious stones, are they not?

A. Yes, sir.

Q. That is to say, the imitation diamonds, or imitation cat's-eyes, or amethysts, or garnets, aqua marines, moonstones, or topaz, in which you deal, would be imitations to be used in lieu of and for the

28 same purposes, for the same uses as ornaments, as the genuine stones, would they not?

A. Yes, sir.

Q. They are used as and for earrings, brooches, necklaces, finger rings, and other ornaments?

A. Yes, sir.

Q. Mr. Lamont, none of these exhibits which you have examined in this case, namely, Exhibit' 2, 3, and 4—none of these would be imitations of precious stones as you recognize them in your trade, would they?

A. Yes, sir.

Q. Would an imitation of a cat's-eye as inferior looking as that rep-

resented by Exhibit 2 be in your business and within your trade knowledge an imitation of the precious stone cat's-eye?

A. Yes, sir; I have seen them worse than that.

Q. The ornamental uses which you have described as those to which the precious stones are put are uses included within the term "jewelry," are they not?

A. Yes, sir.

Q. Now, none of these articles included in Exhibits 2, 3, and 4 could be used as articles of jewelry, could they?

A. The pearls could be used; they are used in the form in which they are there.

Q. The little articles represented by Exhibits 2 and 3 could not?

A. Unless they were mounted; they would not be recognized as jewelry until they are mounted.

Q. Are those of a character or quality sufficiently good as imitations to warrant their being mounted as jewelry?

A. I have seen them mounted.

Q. Articles of the grade and character of these?

A. Yes, sir.

Redirect-examination by Mr. COMSTOCK:

Q. Mr. Lamont, I call your attention to the fact that the provision of the tariff cited by the importer in this case provides for imitations of precious stones composed of paste or glass not exceeding one inch in diameter; state whether you are familiar in your trade with
29 imitation precious stones running up to anything like as large as one inch in dimensions.

A. Yes, sir.

Q. The finer class of imitation precious stones would be smaller?

A. Much smaller.

Q. Not only cheap and inferior, but they are as large as that, you say?

A. Amethysts are often as large as that, and so are crocidolites.

Q. Is one of the purposes for which real precious stones are used, according to your business knowledge and experience, the decorating of garments, especialy ladies' garments?

A. I don't know of any that is imported for that special purpose.

Q. Is that one of the uses to which precious stones are put?

A. They are put to that purpose sometimes; yes, if they can afford it.

By Mr. VAN RENSSELAER:

Q. Precious stones, within your knowledge, are not used for the purpose of being made up into trimmings, are they?

A. Not usually; no, sir.

Q. You have never known any to be so used?

A. Well, I have known of decorations being made for dresses of precious stones, real precious stones; of course they come high.

Q. Very rare?

A. Very rare.

By Mr. COMSTOCK:

Q. Imitation precious stones would be more habitually used for that purpose, would they not?

A. Yes, sir.

EDWARD STARKE, called as a witness on behalf of the importers, being duly sworn, testified as follows:

By Mr. COMSTOCK:

Q. What is your business, Mr. Starke?

A. Employed as salesman for Rudolph C. Hahn.

Q. And his business is what?

A. Importer of precious stones.

30 Q. Have you for some years dealt in precious stones at wholesale in the markets of this country?

A. Yes, sir.

Q. For how long?

A. Me, personally, or Mr. Hahn?

Q. You, personally.

A. I have been in the business eight years.

Q. Have you during that time had a general commercial knowledge in the wholesale markets of the term "precious stones" and its meaning?

A. Yes, sir.

Q. State whether the term as used and understood in the wholesale trade has included stones in any form than rough?

A. It includes cut stones.

Q. And cut into what forms that you think of?

A. Cut into balls and oval stones, and others that are drilled, and beads; those are some of the shapes; plain and faceted and cut into any number of shapes.

Q. And drilled and undrilled?

A. Yes, sir.

Q. And all these shapes might correctly be described as ornamental—stones used for the purposes of ornamentation and decoration?

A. In the jewelry line; used for ornamental work and decoration in the jewelry line.

Q. Examine the four articles constituting Exhibit 5 in this case, and state what they are, if you know.

A. The yellow one is a topaz; there is a white crystal [indicating]; the blue one is an amethyst; and this is a cat's-eye, an imitation cat's-eye [indicating].

Q. Are all of these, with the possible exception of the imitation cat's-eye, genuine precious stones?

A. Yes.

Q. If that were a real cat's-eye, would they be real precious stones?

A. Yes, sir.

Q. Are you sure it is not a real cat's-eye?

A. It is an imitation.

Q. In that condition, with the holes drilled through them, state whether they are not within the trade meaning of the term "precious stones."

A. They are.

Q. And these understandings that you have testified to, did
31 they equally exist in the wholesale trade of this country at and before 1890, just the same as they are now?

A. Certainly.

Q. Been no change?

A. No, sir.

Q. Examine Exhibit 2 and state what those articles are which comprise it.

A. Those are imitation cat's-eyes.

Q. Examine Exhibit 3 and state what, if any, precious stones those articles imitate.

A. That is an imitation topaz [referring to amber-colored article]; that is an imitation aqua marine [referring to a pale blue article]; that is an imitation garnet [referring to a dark red stone]; that is all.

Q. Aren't these amber-colored ones topaz?

A. That looks like topaz.

Q. That comprises them all, does it?

A. Yes, sir.

Q. Examine Exhibit 4 and state what, if any, precious stone these articles represent or imitate.

A. Well, if the pearl is considered a precious stone, why this is an imitation of a precious stone, the pearl.

Q. Is it your understanding that according to the use of terms in your trade pearls are included within the meaning of the term "precious stones?"

A. They are included in the meaning of precious stones, yes. The reason I say if the pearl is not a stone——

Q. Technically you doubt if it is a precious stone?

A. Yes.

Q. But in the trade parlance it is regarded as one?

A. Yes, sir.

Q. And always has been?

A. Yes, sir.

Q. Does your house deal in imitation precious stones as distinguished from genuine ones?

A. Somewhat.

Cross-examination by Mr. VAN RENSSELAER:

Q. Mr. Starke, should you consider any of these things, anything shown you in Exhibits 2 and 3—should you consider any of these
32 of the character and nature of what is commercially recognized as imitation precious stones?

A. Yes, sir.

Q. Have you ever dealt in them commercially of this low grade of quality and character?

A. Well, no, sir; that is a little out of our line. We have had very small quantities, but only as samples; that is all.

Q. You have dealt in imitation precious stones that were used in the jewelry line?

A. Somewhat.

Q. That is, as earrings and brooches, necklaces, finger rings, &c.?

A. Yes, sir.

Q. You have never known of precious stones or imitation precious stones within your knowledge being used for trimmings and such like, and decoration?

A. Well, no, sir; not in our concern. They are used rarely, but we have never had any.

Q. Are you quite positive, Mr. Starke, that pearls, real pearls, are included among precious stones at all?

A. Commercially they are; yes, sir. They are dealt in by all dealers in precious stones.

Q. Would they be included within the general designation precious stones commercially? A pearl is not, as a matter of fact, a stone.

Mr. COMSTOCK. I object to that because it tends to mislead the mind of the witness.

(Objection overruled. Mr. Comstock excepts.)

A. Yes, sir.

(Importers rest.)

Adjourned without fixing date.

33 Hearing resumed March 26, 1896.

Appearances: For the importers, Albert Comstock (of Comstock & Brown); for the collector and Government, James T. Van Rensselaer, asst. U. S. attorney.

EDWARD G. VEITH, called as a witness on behalf of the collector and Government, being duly sworn, testified as follows:

By Mr. VAN RENSSELAER:

Q. Mr. Veith, what is your business, and with whom are you associated?

A. My firm is A. & H. Veith.

Q. Where are they?

A. 719 Broadway, city of New York.

Q. You are a member of the firm?

A. Yes, sir.

Q. How long have you been a member of the firm?

A. About eight years—nine years.

Q. What is the general business of the house of Veith & Co.?

A. Millinery goods, beads, &c.

Q. Will you please look at these articles contained in these envelopes and state whether you have personally dealt at wholesale in these articles, or any of them, on and prior to October 1, 1890?

A. This we have (referring to Exhibit 2); same with this (referring to Exhibit 3); also Exhibit 4.

Q. Now, please look at Exhibit 2 and state, if you please, by what name those articles were dealt in commercially at that same time.

A. This had no commercial name with us at the time it was imported; it was a novelty; it was an imitation of cat's-eye. We have had the real cat's-eyes without the holes, which were very expensive, and these (Exhibit 2) we had made in one part of the country; they are made in France and in Germany as imitations for real cat's-eyes.

34 Q. Were they included within the commercial class of beads or not?

A. Some did and some didn't.

Q. What was the general practice in the trade, so far as you knew?

A. It was only an article lasting for one season, this particular thing, and we called it imitation cat's-eye. We used it in making ornaments, just like we used rhinestones, paste, and glass like that.

Q. Now, please look at the articles in Exhibit 3.

A. Those were called, and are called to-day yet, jewels.

Q. Did they come within the class on and prior to October 1, 1890, and were they known in trade as beads?

A. These have always been under the name of jewels.

Q. Did they come within the general class of beads, if there was such a class?

A. It has always been put in our stock of that class of goods, but we have always called them jewels.

Q. By "that class of goods" do you mean beads?

A. Everything we carry in this class of goods goes in our bead department, like the rhinestones and all these things. The man who has charge of the bead department has charge of these goods, but we call them jewels, and have called them at that time jewels.

Q. Please look at sample Exhibit 4 and state by what name that was commercially known.

A. This was always called pearl beads.

Q. Did you know at that time in your trade a designation of wax beads?

A. Well, when the pearl beads first came out they were only made in France by a good manufacturer, who made them in beads used for necklaces for imitations of the real article, and they have always been called Topart pearls; that is the manufacturer's name.

Q. I ask you whether, at that time, there was an article known commercially as wax beads in your trade?

A. After they were made—they were made in Germany, and they didn't know what to call them, and they called them wax beads because they were filled with wax.

Q. Have you or have you not known them commercially in this country as wax beads?

A. Yes; some people called them wax beads and some called them Roman beads.

Q. Now, Mr. Veith, in October, 1890, and before that date, did you know in trade a class of articles known and recognized as imitation precious stones unset?

A. Yes.

Q. Did your house deal in them?

A. Well, we have always imported them for manufacturing purposes.

Q. Will you please look at the articles which I now show you, examine them carefully, and state whether these articles fairly represent the articles which you have known during that time as imitation precious stones unset?

A. Yes, sir; there is a set one in there.

Q. With the exception of that they appear to be unset?

A. Yes; you might find that there are some in here like they were in the envelope (referring to Exhibit 3), where they have holes in. They are used in the same way.

(Samples offered in evidence received and marked "Govt's. Sample Exhibit A.")

Q. For what purpose do you use these articles which you have designated as imitation precious stones unset in your business?

A. For making ornaments, imitation jewelry, and things of that kind.

Q. Do you set them; is that part of your business?

A. Yes.

Q. Do you know for what purpose they are used when they are set?

A. According to the fashion and according to how they are set. You can set them in real gold and you can set them in imitation for hat ornaments and things of that kind.

36 Q. I see among these articles two specimens, one of which I show you; is that set?

A. That is set; yes, sir.

Q. Referring again particularly to Exhibits 2, 3, and 4, have those been commercially known during your trade experience as imitations of precious stones unset?

A. Yes; they must have been called unset because they are loose.

Q. Have you known them during your trade experience as imitation precious stones unset?

A. Yes.

Q. Do you make that answer with reference to Exhibit 2; is that the understanding?

Mr. COMSTOCK. I object to further attempts on the part of counsel to procure a modification of his own witness' answer, which has now been twice given.

(Objection overruled. Mr. Comstock excepts.)

A. When we imported them to sell we imported them—we understood them that way; that is the only time we imported them; we imported them for a jewelry house on the Lane; never carried them in stock ourselves.

Q. Do you mean to be so understood with regard to Exhibit 3? Have you known those in trade as imitation precious stones?

A. We called them imitation jewels, which I suppose is the same thing; we have always known them under that name.

Q. Have you ever known them under the commercial name imitations of precious stones?

(Same objection, same ruling, and exception.)

A. We have always known them as jewels—imitation; of course they are not real; we call them imitation jewels.

Q. Mr. Veith, did you not see Mr. John T. Linnen, a representative of this office, who called upon you at your store recently in reference to these articles in this suit?

A. Yes.

37 Q. Did you not say to Mr. John T. Linnen when you saw him in relation to these articles that these exhibits in this case, Exhibits 2, 3, and 4, were not commercially imitations of precious stones?

Mr. COMSTOCK. Objected to unless counsel pleads surprise by the examination of his witness.

Mr. VAN RENSSELAER. I plead surprise.

A. I don't remember exactly what I said to Mr. Linnen; I didn't know Mr. Linnen; and if any one would come in with a sample and show it to me, that example Exhibit 4, and ask, Have you got any of these beads? I would answer him, if I had them in stock, Yes. If he would

come in and ask me, Have you got any of these jewels? when I saw the sample I would send the boy to get me some of these goods; we would call them just as the man did; we wouldn't ask him what they were, because they are often known by a dozen different names.

Q. And you say that you did not say to Mr. Linnen, the gentleman whom you recognized here to-day, that none of these exhibits, 2, 3, and 4, were commercially known as imitation precious stones?

A. I don't believe that I said that about No. 4, because I think I must have told him that we called them pearl or wax beads. About the others, I don't know as to the numbers. And about these jewels, these cat's-eyes [referring to Exhibit 2], I don't remember exactly what I did tell him; but the others [referring to Exhibit 3], I am sure I told him they were jewels; I couldn't have told him anything else, because they are sold under that name to-day yet.

Q. Did you not say to Mr. Linnen at the same time that the imitations of precious stones as known in trade did not have holes in them?

A. I don't believe I showed him the imitation precious stones without holes at the time; I might have showed him a few mounted goods.

Q. Mr. Veith, in October, 1890, and shortly before that time, did you deal in an article or articles that were known in trade as imitation pearls?

A. Well, in our business we never call anything imitation; at
38 the same time they are imitations of the real pearls or diamonds or rubies or sapphires; we always call them by the real name, even if they are imitations.

Q. Do you mean to say you do not deal in imitation pearls?

A. I would say that we deal in pearls.

Q. You do not mean in real pearls?

A. No.

Q. Are those pearls that you say you have dealt in represented by these larger white articles which are included in this "Govt.'s Sample Ex. A.?"

A. Yes; we have dealt in all sizes of these goods.

Q. And do these represent the goods that you have dealt in as imitation pearls?

A. These and others, of which there are no samples here.

Q. How did they differ from these?

A. Some of them had holes in, going through this way from side to side.

Q. Do you know anything about what these pearls, we will call them, in Exhibit A are made of—that is, just whether you know?

A. Yes.

Q. What are they made of?

A. They are made of a composition and filled with wax.

Q. These that you see before you?

A. Yes.

Q. Is there any filling in those at all?

A. Yes; that is what we call wax, but it is really a fish scale melted.

Q. Did you not say to Mr. John T. Linnen, at the same interview, that the article Exhibit 4 was not commercially known as imitation pearls?

A. As I said before, we call them pearl beads or pearls.

Q. And you will not say whether or not you said to Mr. Linnen that they were not commercially known as imitation pearls?

A. Yes. This is the package Mr. Linnen showed me at the time.
Q. Yes.
A. We call them imitation pearls according to quality, very often, too; certain qualities we can only sell to the jewelry trade for imitation pearl necklaces and things of that kind.

Cross-examination by Mr. COMSTOCK:

Q. Now, the articles composing the three exhibits, 2, 3, and 4—that is, the cat's-eyes, the mat jewels, and the pearls—those would all be
39 recognized by your trade under the term imitation precious stones?
A. Yes.
Q. You don't regard any of them as real precious stones, but you know them to be imitations?
A. Yes.
Q. And the articles in the envelope marked "Exhibit A," those are also more usually known as jewels in your trade, are they not?
A. Yes.
Q. The ordinary term used for all these things is the one word "jewels?"
A. Yes.
Q. You testified that one of the articles in Exhibit A, which counsel for the Government selected and showed you, illustrated the way those things were set; tell me how they were set when they have two little holes through them, like Exhibits 2, 3, and 4?
A. Same way; or with clamps which cover the holes.
Q. The holes render them also useful for other kinds of setting?
A. Yes, sir.

By Mr. VAN RENSSELAER:

Q. Do you testify here that you have ever seen any articles like these in Exhibit 3 set?
A. Yes, sir; set them every day.

HERMAN SCHMALHAUSEN, called as a witness on behalf of the collector and Government, being duly sworn, testified as follows:

By Mr. VAN RENSSELAER:

Q. What is your business, Mr. Schmalhausen?
A. I import beads.
Q. Where is your place of business?
A. 43 Great Jones street.
Q. Are you alone or with a firm?
A. Alone.
Q. How long have you been in that business?
A. I have been established myself 33 years.
Q. In New York during that whole time?
A. In New York.
Q. Did you in October, 1890, and for some little time before
40 that, buy and sell, or either one of them, at wholesale, in the markets of this country, the beads in which you said you dealt?
A. Yes, sir.
Q. Please look at these exhibits in this case, Exhibits 2, 3, and 4, and

say whether at that time—that is, in October, 1890, and shortly before that—you dealt in those articles, or any of them?

A. I have not sold Exhibit 2; I really couldn't state exactly whether I did at that time deal in Exhibit 3; I dealt in Exhibit 4.

Q. Were or were not these articles, Exhibit 4, included within the class of articles that you have said you have dealt in as beads?

A. No. 4 was.

Q. By what particular name or designation was No. 4 known?

A. No. 4 is known as wax beads, or pearl beads.

Q. At that same time did you know a class of articles, commercially, as imitations of precious stones?

A. Yes, sir.

Q. Did Exhibit 4 belong to that class, commercially?

A. No, sir.

Q. What were those articles that were known in trade as imitation precious stones at that time?

A. Well, they were imitations of those stones made of paste and used for setting in jewelry.

Q. Will you please look at the articles in Exhibit A, and state whether those, or any of them, represent such imitation precious stones as you have described?

A. They are; a good many of them; they are imitations of precious stones, as I understand it; as I have sold them.

Q. Will you please state, if you know, what precious stones they imitate?

A. There is a green one, that we would call an emerald; these we would call rubies [referring to reddish stones]; these are amethysts [referring to heliotrope-colored stone]; diamonds [referring to colorless stones]; topaz [referring to amber-colored stone]; sapphire [referring to blue one].

Q. Were the imitation precious stones that you are familiar with cut, or apparently cut, as indicated by the articles in Exhibit A?

41 A. Yes; they were cut; or at least they appeared cut; some pressed, faceted.

Q. Was that universally or generally true within your knowledge as to those imitation precious stones that they appeared to be cut or faceted?

A. Yes, sir.

Q. Did you ever know them to have holes in them or through them?

A. No.

Cross-examination by Mr. COMSTOCK:

Q. Mr. Schmalhausen, the usual name used in the trade for these imitation stones that you have been looking at and which you say you dealt in was jewels, wasn't it [referring to Exhibit A]?

A. No; not as I understand it; jewels had holes in them to sew them on.

Q. You know, do you not, that Exhibit 4, about which you testified here, is an imitation of a pearl?

A. Yes.

Q. And that is its purpose and use when it is put to use, isn't it, to bear the imitation of a pearl?

A. Yes, sir.

Q. And as to Exhibit 3, you are familiar with these articles in trade, are you not?

A. I am now; I said I didn't remember the year when I commenced to deal in them; it must have been about 1890, but I am not sure about that.

Q. You know that these articles in Exhibit 3 are also intended to imitate the appearance and color of different precious stones, don't you?

A. Yes, sir.

Q. With the exception of being drilled or having holes in them they are practically the same sort of thing as Exhibit A in the nature of the imitation?

A. I should think so; yes.

Q. You said that all the articles which you had dealt in under the name of imitation precious stones were cut or appeared to be cut. Was that true of the articles included in Exhibit A, which were imitations of half pearls, or were they only pressed dome shaped? Those don't

42 appear to be faceted or cut, but merely pressed dome shaped.

A. No; they don't appear cut.

Q. But do appear to be pressed in a dome shape?

A. Yes.

LOUIS SCHLOSS, called as a witness on behalf of the collector and Government, being duly sworn, testified as follows:

By Mr. VAN RENSSELAER:

Q. What is your business, please, Mr. Schloss?

A. I am in the fancy goods business.

Q. With whom?

A. A. Steinhardt & Bro.

Q. 452 Broadway, New York?

A. Yes, sir.

Q. What is the nature of the business of that house?

A. We have five different departments.

Q. Which one are you in?

A. I am in the fancy goods department—articles of fashion.

Q. How long have you been with them?

A. Since 1888.

Q. Have you been a buyer of the goods dealt in by the house, or seller at wholesale, or both?

A. I bought the goods from samples submitted from the other side.

Q. Did you sell the goods?

A. I also sold.

Q. At wholesale?

A. Yes, sir.

Q. Have you, then, in your department of the business a general class of merchandise under the general name or designation of beads?

A. Yes, sir.

Q. Have you dealt in those at wholesale?

A. Yes.

Q. Will you please look at these samples, Exhibits 2, 3, and 4, in this case, and say whether you have dealt in them or some of them?

A. Exhibit 2, not; not in Exhibit 3; I have dealt in Exhibit 4.

Q. Were these articles represented by Exhibit 4 included or not within the general class of beads?

A. Exhibit 4 is what we call beads.

Q. Has that any particular name?

A. Yes; we call them wax beads.

43 Cross-examination by Mr. COMSTOCK:

Q. Now, Exhibit 4, what are those meant to imitate, if you know?

A. They are meant to imitate pearls—that is, we import them mostly to be used on necklaces, as necklaces.

Q. They are bought and sold in the trade as imitations of pearls, aren't they?

A. Yes, sir.

MAX HERTZ, called as a witness on behalf of the collector and Government, being duly sworn, testified as follows:

By Mr. VAN RENSSELAER:

Q. What is your business, Mr. Hertz?

A. I am buyer in the jewelry department of R. H. Macy & Co.

Q. Here in New York City?

A. Here in New York City.

Q. How long have you been in that department?

A. I have been there nearly a year.

Q. Where were you in business before that time?

A. Before that I was in the retail dry goods business and in the importing business.

Q. Had you had no experience in the jewelry line of business before one year ago?

A. I had as far as imported goods went, and in the retail dry goods business I had experience also; I mentioned that I was in the retail dry goods business before that.

Q. Did you deal in jewelry, or jewelry of any kind?

A. We dealt in some jewelry—wares, and goods of that description.

Q. Please look at Exhibit 4 in this case and say whether before October, 1890, you had dealt in that article.

A. I had, sir.

Q. Before October, 1890?

A. Yes, sir.

Q. Did you buy it or sell it at wholesale in this country, or both, at that time?

A. At that time I was selling—that is, before that time I was selling, too.

Q. Selling at wholesale?

A. Selling at wholesale.

44 Q. Will you state by what name that article was known in trade and commerce of this country at that time?

A. Wax beads.

Q. In October, 1890, and shortly before that time, were you dealing in an article commercially known and recognized as imitations of precious stones?

A. I was not.

Q. Were you at that time dealing in an article commercially known as imitation pearls?

A. Not commercially known as imitation pearls; no, sir.

Cross-examination by Mr. COMSTOCK:

Q. What do you mean, Mr. Hertz, by your last answer, "Not commercially known as imitation pearls?"

A. I don't know of anything that I dealt in that they called imitation pearls.

Q. Exhibit 4 is in fact meant to imitate pearls, is it not?

A. I hardly think so.

Q. What do you think it is meant to imitate?

A. I don't know whether it is an imitation at all. Is it?

Q. Did you ever hear articles like Exhibit 4 spoken of as pearl beads in the trade?

A. Yes, sir.

Q. That name belonged to them just as much as the name "wax beads" in the trade?

A. Well, I naturally would think wax beads would be the correct thing for them, because that is what they are.

Q. But you know they were called pearl beads as well as wax beads in the trade?

A. Perhaps some people would call them that way.

JOSEPH WILCOX, called as a witness on behalf of the collector and Government, being duly sworn, testified as follows:

By Mr. VAN RENSSELAER:

Q. What is your business and with whom, Mr. Wilcox?

A. I am employed as a buyer by R. H. Macy & Co.

45 Q. Here in New York City?

A. Yes.

Q. How long have you been in that capacity?

A. Since 1879.

Q. What has been your department in the business?

A. It is known as the notion department.

Q. In that department, did you, in October, 1890, and for some time before that date, know an article commercially known and recognized as beads?

A. Yes, sir.

Q. Did you buy or sell those at wholesale or both?

A. I bought them at wholesale, and sold at retail.

Q. Please look at the samples in this case, Exhibits 2, 3, and 4, and say if you have dealt in these articles, or any of them.

A. Exhibit 2 we have not; Exhibit 3 we have; Exhibit 4 we have not.

Q. Will you state whether the articles represented by Exhibit 3 that you have dealt in were or were not included within the general commercial class of beads?

A. They were.

Q. At that same time did you deal in a class of articles commercially known as imitation precious stones?

A. No, sir.

Cross-examination by Mr. COMSTOCK:

Q. There was no such term as the one last suggested by counsel for the Government in your retail business, was there, Mr. Wilcox?

A. No, sir.

Q. You know the term "jewels" as applied to certain articles in your trade, do you not?

A. Yes.

Q. Did you know it as a term in the wholesale trade when you went to buy goods?

A. Yes, sir.

Q. Would that include Exhibit 3?

A. Yes.

Adjourned to March 31, 1896, 11 a. m.

(Government rests—testimony closed.)

Dated May 19, 1896.

46 MORRISON & SON } No. 2174.
vs.
UNITED STATES. }

WOLFF & CO. } No. 2182.
vs.
UNITED STATES. }

WHEELER, *J.:*

The tariff act of 1890, by paragraph 108, provides for a duty of 60 per cent on "thin blown glass * * * and all other manufactures of glass, or of which glass shall be the component material of chief value, not specially provided for;" by paragraph 445, for a duty of 10 per cent on "glass beads, loose, unthreaded, or unstrung;" and by paragraph 454, for a duty of 10 per cent on "imitations of precious stones, composed of paste or glass, not exceeding one inch in dimensions, not set." There is no mention of beads strung. These importations are of variegated glass beads, strung; similar glass ornaments without holes for stringing; black glass beads, sometimes called nailheads, unstrung; and hollow glass beads with wax inserted, giving an appearance like pearl, strung. They have all been classified as manufactures of glass, under paragraph 108, against protests referring to paragraphs 445 and 454. The classification of the black glass beads, unstrung, is, upon the evidence, conceded to be erroneous. Beads unstrung are impliedly beads capable of being strung; and the ornaments without holes for stringing are not such. The
47 variegated beads strung are manufactures of glass, and, as they were not specially provided for, were properly classified. The wax beads, although they may be imitations of pearls as precious stones, are not composed of glass or paste, but glass and wax, and the wax is what, if anything, constitutes the imitation. And imitations of precious stones, unset, are impliedly imitations capable of being set, which these beads are not.

Decision of General Appraisers reversed as to black glass beads, and affirmed as to the residue.

Comstock & Brown for plaintiffs.
James T. Van Rensselaer, assistant U. S. attorney, for United States.

At a stated term of the United States circuit court for the southern district of New York, held at the court rooms in the post-office building in New York City, on the 22d day of December, 1896.

Present: Hon. Hoyt H. Wheeler, judge.

E. A. MORRISON & SONS, APPELLANTS,
vs.
THE UNITED STATES, APPELLEE. } No. 2174.

The above cause coming on for hearing and determination before this court on the application of the above-named importers for a review of the questions of law and fact involved in the decision of the Board
48 of United States General Appraisers herein, on the return of the said board of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decision thereon, and on the return of the evidence taken before the Hon. George H. Sharpe, referee, herein;

Now, after hearing Albert Comstock, esq., of counsel for the said importers, and James T. Van Rensselaer, esq., assistant United States attorney, on behalf of the United States, it is

Ordered, adjudged, and decreed that in the proceedings before the Board of General Appraisers there was error in regard to certain black glass nail-head beads, and that their decision herein as to said articles be, and the same is hereby, reversed; and it is further

Ordered, adjudged, and decreed that the said black glass nail-head beads were properly dutiable at only 10 per cent ad valorem under paragraph 445, tariff act of October 1, 1890, as glass beads, loose, unthreaded, or unstrung; and it is further

Ordered, adjudged, and decreed that as to all the remaining merchandise involved in this proceeding there was no error in the proceedings before the Board of General Appraisers, and that their decision herein, except as aforesaid, is hereby affirmed.

(Sgd.) HOYT H. WHEELER,
U. S. Judge.

Assented to as to form.
(Sgd.) WALLACE MACFARLANE,
U. S. Attorney.

49 United States circuit court of appeals for the second circuit.

EDWARD A. MORRISON AND EDWARD MORRISON, JR., trading as E. A. Morrison & Son, in the matter of their importations by "La Champagne," February 4, 1891, et al., appellants,
vs.
THE UNITED STATES OF AMERICA, APPELLEE. } No. 2174.

Assignment of errors.

The above-named appellants hereby assign error to the decision and judgment of the circuit court of the United States for the southern district of New York, herein, in the following particulars:

First. In that the said court ordered, adjudged, and decreed that, except as to certain nail-head beads, the decision of the Board of United States General Appraisers herein should be affirmed.

Second. In that the said court ordered, adjudged, and decreed that paragraph 108, act of October 1, 1890, covered and provided for the merchandise in question, excepting the aforementioned nail-head beads, and also excepting certain masses of jewel stones as to which the decision of the Board of General Appraisers was in the importers' favor.

Third. In that the said court did not order, adjudge, and decree
50 that the provisions for imitations of precious stones composed of paste or glass not exceeding one inch in dimensions, not set, in paragraph 454 of the said act covered and provided for all of said merchandise with the two exceptions specified in the second assignment of error.

Fourth. In that the said court did not order, adjudge, and decree that, except as to the said masses of jewel stones, the decision of the said Board of General Appraisers should be in all things reversed.

Dated New York, January 6, 1897.

COMSTOCK & BROWN,
Attorneys for Importers, Appellants, 56 Pine St., N. Y. City.

United States circuit court of appeals for the second circuit.

E. A. MORRISON & SON, APPELLANTS,
vs.
THE UNITED STATES, APPELLEE. } No. 2174.

It is hereby stipulated by and between the counsel for the respective parties to this action, that all the requirements of law as to protest, appeal to the U. S. circuit court, and appeal to this court have been duly and properly complied with herein, and that of the record and appeal to this court the following portions only shall be printed, viz:

51 The caption and Schedules A and B of the original petition, all of the collector's letter of August 10, 1891, not included within brackets, the protest of the appellants, the letter of the assistant appraiser of May 29, 1891, the decision of the general appraisers, the referee's report of the evidence taken before him, commencing with the page numbered 1 thereof and excluding all matter included within brackets, the

opinion of the circuit judge, the decree of the circuit court, the assignment of errors, and this stipulation, and that no endorsement of or on any paper shall be printed.

And it is further stipulated that the merchandise herein involved was in fact beads, and was in fact threaded or strung at the time of its importation, and was thereby excluded from classification under paragraph 445, act of October 1, 1890, and that unless this court shall hold that it was dutiable under paragraph 454 of the said act, as imitations of precious stones, &c., it was properly classified by the collector of customs under paragraph 108 of the said act as manufactures of glass not specially provided for.

Dated New York, March 18, 1897.

WALLACE MACFARLANE,
U. S. Attorney, for the Appellee.
COMSTOCK & BROWN,
For Appellants.

Ordered accordingly.
N. Y., March 20, 1897.

E. H. LACOMBE,
U. S. Circuit Judge.

52 United States circuit court of appeals for the second circuit. Nos. 54 and 55. October term, 1897.

Submitted December 17, 1897. Decided January 7, 1898.

E. A. MORRISON & COMPANY, APPELLANTS,
vs.
THE UNITED STATES, APPELLEE. } 2174.

H. WOLFF & COMPANY, APPELLANTS,
vs.
THE UNITED STATES, APPELLEE. } 2182.

Appeals from the circuit court of the United States for the southern district of New York. Before Judges Lacombe and Shipman.

SHIPMAN, circuit judge.

In the year 1891 E. A. Morrison & Son imported into the port of New York two invoices of glass strung beads not exceeding one inch in dimensions, of two different kinds. One kind consisted of small brown beads, which were a very poor imitation of the precious stone known as "cats eye," which were used principally in the millinery trade for trimming, or for trimming ladies' garments, and were popularly styled "jewels" or "jewel stones." The second kind consisted of larger beads than those of the first class, which were also strung and were imitations of precious stones, and did not exceed one inch in dimensions, and were used for trimming and were also called "jewels."

53 In 1893 and 1894 H. Wolff & Company imported into the port of New York sundry invoices of glass strung beads, not exceeding one inch in dimensions, which were imitation pearl beads and

were called by that name, or were called wax beads, or Roman beads, and were used for necklaces or for trimming. All these articles have been long commercially known as beads. The collector assessed a duty of sixty per cent ad valorem upon all of these goods under paragraph 108 of the tariff act of 1890, which was as follows: "Thin blown glass, blown with or without a mold, including glass chimneys and all other manufactures of glass, or of which glass shall be the component material of chief value, not specially provided for in this act, sixty per centum ad valorem."

The importers protested that the goods were dutiable under paragraph 454 of the same act, which imposed a duty of ten per cent ad valorem upon "imitations of precious stones composed of paste or glass not exceeding one inch in dimensions, not set." The Board of General Appraisers sustained the collector, and the circuit court affirmed the decision of the board upon the articles now in question, whereupon the importers appealed to this court. The cases were tried together upon substantially the same record.

"Glass beads, loose, unthreaded or unstrung," are dutiable at ten per cent ad valorem under paragraph 445 of the act of 1890. There is no duty specifically placed upon glass strung beads, and it is conceded that the merchandise in question was excluded from classification under paragraph 445, and that unless it was dutiable under paragraph 454 it was properly classified by the collector under paragraph 108 as manufactures of glass not specially provided for.

The articles were, in both popular and in commercial language, beads. The two Morrison importations, which were used for trimming, were also called, apparently for convenience sake, "jewels," but this subname has no bearing upon the classification for tariff purposes. The
54 term "imitations of precious stones" is not a commercial term and has no especial commercial meaning. All these articles were, in fact, imitations of precious stones, and are known to be such by the people who deal in them. The term "imitations of precious stones, unset," implies that there were imitations which were set; that is, made into or arranged as ornaments or imitation jewelry. A natural suggestion is that the two Morrison importations were to be exclusively used for trimming ladies' hats or apparel and were not to be set into ornaments for the person, but there can be no practical tariff distinction between imitations of precious stones made of glass or paste, unset, which are to be set into articles of jewelry and those imitations which are to be used as ornaments upon ladies' hats or apparel.

Inasmuch as the only glass beads which are named in the tariff act are unstrung beads, these strung beads are not classified by name, and their position for tariff purposes must be within some paragraph of general description. The only two paragraphs that can be discovered which describe them are Nos. 454 and 108. They are imitations of precious stones, composed of glass or paste, of the designated size, and are unset, and they are manufactures of glass, and if not specially provided for must fall into the general receptacle for glass articles which have escaped other classification. But adequate provision seems to have been made for them by the terms of paragraph 454.

The decision of the circuit court, so far as it related to the articles in question, is reversed.

Albert Comstock, for the appellants.

James T. Van Rensselaer, assistant United States attorney, for the appellee.

55 At a stated term of the United States circuit court of appeals for the second circuit, held at the United States court rooms, in the city of New York, on the 19th day of January, in the year of our Lord one thousand eight hundred and ninety-eight.

Present: The honorables E. Henry Lacombe, Nathaniel Shipman, circuit judges.

E. A. MORRISON & SON, APPELLANTS,
vs.
THE UNITED STATES OF AMERICA, APPELLEE. } Suit No. 2174.

The appeal from the decision of the circuit court of the United States for the southern district of New York herein made on the 9th day of December, 1896, having come on to be heard, and due deliberation having been had thereon: Now, on motion of Albert Comstock, esq., of counsel for the appellants, it is

Ordered, that the decision aforesaid be and the same is hereby reversed, as far as the same affirmed the decision of the Board of U. S. General Appraisers, and that the merchandise which is the subject of appeal to this court is properly dutiable at 10% ad val. under par. 454, tariff act of October 1, 1890, as imitations of precious stones; and it is further

Ordered, that a mandate issue to the circuit court of the United States for the southern district of New York, directing that court to proceed in accordance with the opinion of this court.

Assented to as to form.

WALLACE MACFARLANE,
U. S. Attorney, Attorney for Appellee.

56 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 55, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of E. A. Morrison & Son, appellants, against The United States, appellee, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 15th day of February, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the said United States the one hundred and twenty-second.

[SEAL.] WM. PARKIN, *Clerk.*

57 (Indorsed:) Case No. 16869. U. S. C. C. of appeals, 2nd circuit. Term No., 294. The United States, petitioner, vs. E. A. Morrison & Son. Exhibit to petition for writ of certiorari. Filed May 5, 1898.

58 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, greeting:

Being informed that there is now pending before you a suit in which E. A. Morrison & Son are appellants and the United States is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the southern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court
59 of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, the 28th day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

60 (Indorsed:) Supreme Court of the United States. No. 656, October term, 1897. The United States vs. E. A. Morrison & Son. Writ of certiorari.

61 In the Supreme Court of the United States, October term, 1897.

THE UNITED STATES, APPELLEE,
vs.
E. A. MORRISON & SON, APPELLANTS. } No. 656.

Stipulation.

It is hereby stipulated between counsel for the parties to the above-entitled cause that the certified copy of the record of the cause in the United States circuit court of appeals for the second circuit, now on file in the Supreme Court of the United States, may be treated as the return to the writ of certiorari issued therein.

J. K. RICHARDS,
Solicitor-General.

ALBERT COMSTOCK,
Counsel for Respondent.

(Endorsed:) Morrison & Son vs. U. S. Stipulation as to writ of certiorari. United States circuit court of appeals, second circuit. Filed June 3, 1898. William Parkin, clerk.

62 *To the honorable the Supreme Court of the United States:*

The record and all proceedings in the cause whereof mention is within made, having been lately certified and filed in the office of the clerk of the honorable the Supreme Court of the United States, a certified copy

of the stipulation of counsel is hereto annexed, and under direction of counsel for the appellant said stipulation is certified as a return to this writ.

New York, June 3rd, 1898.

[SEAL.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

63 (Indorsed:) United States circuit court of appeals, second circuit. Morrison & Son vs. United States. Return to writ of certiorari.

64 (Indorsement on cover:) Case No. 16869. Supreme Court U. S. October term, 1898. Term No., 294. The United States, petitioner, vs. E. A. Morrison & Son. Writ of certiorari and return. Filed June 9, 1898.